

By Senator Alexander

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1 A bill to be entitled
2 An act relating to state contracts; amending s.
3 287.063, F.S.; prohibiting the term of payment for
4 consolidated equipment finance contracts from extending
5 beyond the anticipated useful life of the equipment
6 financed; deleting the requirement that the Chief
7 Financial Officer establish criteria prohibiting a
8 state agency from obligating an annualized amount of
9 payments for certain deferred payment purchases;
10 amending s. 287.064, F.S.; extending the period allowed
11 for the repayment of funds for certain purchases
12 relating to energy conservation measures; requiring
13 that guaranteed energy performance savings contractors
14 provide for the replacement or the extension of the
15 useful life of the equipment during the term of a
16 contract; amending s. 489.145, F.S.; revising
17 provisions relating to guaranteed energy performance
18 savings contracting to include energy consumption and
19 energy-related operational savings; revising provisions
20 for the financing of guaranteed energy performance
21 savings contracts; revising criteria for proposed
22 contracts; revising program administration and contract
23 review provisions; requiring that consolidated
24 financing of deferred payment commodity contracts be
25 secured by certain funds; prohibiting the Chief
26 Financial Officer from approving certain contracts;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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31 Section 1. Paragraph (b) of subsection (2) and subsection
32 (5) of section 287.063, Florida Statutes, are amended to read:

33 287.063 Deferred-payment commodity contracts; preaudit
34 review.--

35 (2)

36 (b) The Chief Financial Officer shall establish, by rule,
37 criteria for approving purchases made under deferred-payment
38 contracts which require the payment of interest. Criteria shall
39 include, but not be limited to, the following provisions:

40 1. No contract shall be approved in which interest exceeds
41 the statutory ceiling contained in this section. However, the
42 interest component of any master equipment financing agreement
43 entered into for the purpose of consolidated financing of a
44 deferred-payment, installment sale, or lease-purchase shall be
45 deemed to comply with the interest rate limitation of this
46 section so long as the interest component of every interagency
47 agreement under such master equipment financing agreement
48 complies with the interest rate limitation of this section.

49 2. No deferred-payment purchase for less than \$30,000 shall
50 be approved, unless it can be satisfactorily demonstrated and
51 documented to the Chief Financial Officer that failure to make
52 such deferred-payment purchase would adversely affect an agency
53 in the performance of its duties. However, the Chief Financial
54 Officer may approve any deferred-payment purchase if the Chief
55 Financial Officer determines that such purchase is economically
56 beneficial to the state.

57 ~~3. No agency shall obligate an annualized amount of~~
58 ~~payments for deferred-payment purchases in excess of current~~

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59 ~~operating capital outlay appropriations, unless specifically~~
60 ~~authorized by law or unless it can be satisfactorily demonstrated~~
61 ~~and documented to the Chief Financial Officer that failure to~~
62 ~~make such deferred-payment purchase would adversely affect an~~
63 ~~agency in the performance of its duties.~~

64 3.4. No contract shall be approved which extends payment
65 beyond 5 years, unless it can be satisfactorily demonstrated and
66 documented to the Chief Financial Officer that failure to make
67 such deferred-payment purchase would adversely affect an agency
68 in the performance of its duties. The payment term may not exceed
69 the useful life of the equipment unless the contract provides for
70 the replacement or the extension of the useful life of the
71 equipment during the term of the loan.

72 (5) For purposes of this section, the annualized amount of
73 any such deferred payment commodity contract must be supported
74 from available recurring funds appropriated to the agency in an
75 appropriation category, ~~other than the expense appropriation~~
76 ~~category~~ as defined in chapter 216, which ~~that~~ the Chief
77 Financial Officer has determined is appropriate or which ~~that~~ the
78 Legislature has designated for payment of the obligation incurred
79 under this section.

80 Section 2. Subsections (10) and (11) of section 287.064,
81 Florida Statutes, are amended to read:

82 287.064 Consolidated financing of deferred-payment
83 purchases.--

84 (10) Costs incurred pursuant to a guaranteed energy
85 performance savings contract, including the cost of energy
86 conservation measures, each as defined in s. 489.145, may be
87 financed pursuant to a master equipment financing agreement;

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88 however, the costs of training, operation, and maintenance may
89 not be financed. The period of time for repayment of the funds
90 drawn pursuant to the master equipment financing agreement under
91 this subsection may exceed 5 years but may not exceed 20 ~~10~~ years
92 for energy conservation measures pursuant to s. 489.145,
93 excluding the costs of training, operation, and maintenance. The
94 guaranteed energy performance savings contractor shall provide
95 for the replacement or the extension of the useful life of the
96 equipment during the term of the contract.

97 (11) For purposes of consolidated financing of deferred
98 payment commodity contracts under this section by a state agency,
99 the annualized amount of any such contract must be supported from
100 available recurring funds appropriated to the agency in an
101 appropriation category, ~~other than the expense appropriation~~
102 ~~category~~ as defined in chapter 216, which ~~that~~ the Chief
103 Financial Officer has determined is appropriate or which ~~that~~ the
104 Legislature has designated for payment of the obligation incurred
105 under this section.

106 Section 3. Section 489.145, Florida Statutes, is amended to
107 read:

108 489.145 Guaranteed energy performance savings
109 contracting.--

110 (1) SHORT TITLE.--This section may be cited as the
111 "Guaranteed Energy Performance Savings Contracting Act."

112 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
113 investment in energy conservation measures in agency facilities
114 can reduce the amount of energy consumed and produce immediate
115 and long-term savings. It is the policy of this state to
116 encourage agencies to invest in energy conservation measures ~~that~~

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117 ~~reduce energy consumption, produce a cost savings for the agency,~~
118 ~~and improve the quality of indoor air in public facilities and to~~
119 ~~operate, maintain, and, when economically feasible, build or~~
120 ~~renovate existing agency facilities in such a manner as to~~
121 minimize energy consumption and maximize energy savings. It is
122 further the policy of this state to encourage agencies to
123 reinvest any energy savings resulting from energy conservation
124 measures in additional energy conservation efforts.

125 (3) DEFINITIONS.--As used in this section, the term:

126 (a) "Agency" means the state, a municipality, or a
127 political subdivision.

128 (b) "Energy conservation measure" means a ~~training program,~~
129 facility alteration, or equipment purchase to be used in new
130 construction, including an addition to an existing facility,
131 which reduces energy or energy-related operating costs and
132 includes, but is not limited to:

133 1. Insulation of the facility structure and systems within
134 the facility.

135 2. Storm windows and doors, caulking or weatherstripping,
136 multiglazed windows and doors, heat-absorbing, or heat-
137 reflective, glazed and coated window and door systems, additional
138 glazing, reductions in glass area, and other window and door
139 system modifications that reduce energy consumption.

140 3. Automatic energy control systems.

141 4. Heating, ventilating, or air-conditioning system
142 modifications or replacements.

143 5. Replacement or modifications of lighting fixtures to
144 increase the energy efficiency of the lighting system, which, at

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145 a minimum, must conform to the applicable state or local building
146 code.

147 6. Energy recovery systems.

148 7. Cogeneration systems that produce steam or forms of
149 energy such as heat, as well as electricity, for use primarily
150 within a facility or complex of facilities.

151 8. Energy conservation measures that reduce Btu, kW, or kWh
152 consumed or provide long-term operating cost reductions ~~or~~
153 ~~significantly reduce Btu consumed.~~

154 9. Renewable energy systems, such as solar, biomass, or
155 wind systems.

156 10. Devices that reduce water consumption or sewer charges.

157 11. Storage systems, such as fuel cells and thermal
158 storage.

159 12. Generating technologies, such as microturbines.

160 13. Any other repair, replacement, or upgrade of existing
161 equipment.

162 (c) "Energy cost savings" means a measured reduction in the
163 cost of fuel, energy consumption, and stipulated operation and
164 maintenance created from the implementation of one or more energy
165 conservation measures when compared with an established baseline
166 for the previous cost of fuel, energy consumption, and stipulated
167 operation and maintenance.

168 (d) "Guaranteed energy performance savings contract" means
169 a contract for the evaluation, recommendation, and implementation
170 of energy conservation measures or energy-related operational
171 saving measures, which, at a minimum, shall include:

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172 1. The design and installation of equipment to implement
173 one or more of such measures and, if applicable, operation and
174 maintenance of such measures.

175 2. The amount of any actual annual savings that meet or
176 exceed total annual contract payments made by the agency for the
177 contract.

178 3. The finance charges incurred by the agency over the life
179 of the contract and may include allowable cost-avoidance. As used
180 in this section, allowable cost-avoidance calculations include,
181 but are not limited to, avoided provable budgeted costs contained
182 in a capital replacement plan less the current undepreciated
183 value of replaced equipment and the replacement cost of the new
184 equipment.

185 (e) "Guaranteed energy performance savings contractor"
186 means a person or business that is licensed under chapter 471,
187 chapter 481, or this chapter, and is experienced in the analysis,
188 design, implementation, or installation of energy conservation
189 measures through energy performance contracts.

190 (4) PROCEDURES.--

191 (a) An agency may enter into a guaranteed energy
192 performance savings contract with a guaranteed energy performance
193 savings contractor to ~~significantly~~ reduce energy consumption or
194 energy-related operating costs of an agency facility through one
195 or more energy conservation measures.

196 (b) Before design and installation of energy conservation
197 measures, the agency must obtain from a guaranteed energy
198 performance savings contractor a report that summarizes the costs
199 associated with the energy conservation measures or energy-
200 related operational cost-saving measures and provides an estimate

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201 of the amount of the ~~energy~~ cost savings. The agency and the
202 guaranteed energy performance savings contractor may enter into a
203 separate agreement to pay for costs associated with the
204 preparation and delivery of the report; however, payment to the
205 contractor shall be contingent upon the report's projection of
206 energy or operational cost savings being equal to or greater than
207 the total projected costs of the design and installation of the
208 report's energy conservation measures.

209 (c) The agency may enter into a guaranteed energy
210 performance savings contract with a guaranteed energy performance
211 savings contractor if the agency finds that the amount the agency
212 would spend on the energy conservation or energy-related cost-
213 saving measures will not likely exceed the amount of the energy
214 or energy-related cost savings for up to 20 years from the date
215 of installation, based on the life cycle cost calculations
216 provided in s. 255.255, if the recommendations in the report were
217 followed and if the qualified provider or providers give a
218 written guarantee that the energy or energy-related cost savings
219 will meet or exceed the costs of the system. However, actual
220 computed cost savings must meet or exceed the estimated cost
221 savings provided in program approval. Baseline adjustments used
222 in calculations must be specified in the contract. The contract
223 may provide for installment payments for a period not to exceed
224 20 years.

225 (d) A guaranteed energy performance savings contractor must
226 be selected in compliance with s. 287.055; except that if fewer
227 than three firms are qualified to perform the required services,
228 the requirement for agency selection of three firms, as provided

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229 | in s. 287.055(4) (b), and the bid requirements of s. 287.057 do
230 | not apply.

231 | (e) Before entering into a guaranteed energy performance
232 | savings contract, an agency must provide published notice of the
233 | meeting in which it proposes to award the contract, the names of
234 | the parties to the proposed contract, and the contract's purpose.

235 | (f) A guaranteed energy performance savings contract may
236 | provide for financing, including tax-exempt financing, by a third
237 | party. The contract for third party financing may be separate
238 | from the energy performance contract. A separate contract for
239 | third party financing must include a provision that the third
240 | party financier must not be granted rights or privileges that
241 | exceed the rights and privileges available to the guaranteed
242 | energy performance savings contractor.

243 | (g) Financing for guaranteed energy performance savings
244 | contracts may be provided under the authority of s. 287.064.

245 | (h) The Office of the Chief Financial Officer shall review
246 | proposals to ensure that the most effective financing is being
247 | used.

248 | (i)~~(g)~~ In determining the amount the agency will finance to
249 | acquire the energy conservation measures, the agency may reduce
250 | such amount by the application of any grant moneys, rebates, or
251 | capital funding available to the agency for the purpose of buying
252 | down the cost of the guaranteed energy performance savings
253 | contract. However, in calculating the life cycle cost as required
254 | in paragraph (c), the agency shall not apply any grants, rebates,
255 | or capital funding.

256 | (5) CONTRACT PROVISIONS.--

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257 (a) A guaranteed energy performance savings contract must
258 include a written guarantee that may include, but is not limited
259 to the form of, a letter of credit, insurance policy, or
260 corporate guarantee by the guaranteed energy performance savings
261 contractor that annual energy cost savings will meet or exceed
262 the amortized cost of energy conservation measures.

263 (b) The guaranteed energy performance savings contract must
264 provide that all payments, except obligations on termination of
265 the contract before its expiration, may be made over time, but
266 not to exceed 20 years from the date of complete installation and
267 acceptance by the agency, and that the annual savings are
268 guaranteed to the extent necessary to make annual payments to
269 satisfy the guaranteed energy performance savings contract.

270 (c) The guaranteed energy performance savings contract must
271 require that the guaranteed energy performance savings contractor
272 to whom the contract is awarded provide a 100-percent public
273 construction bond to the agency for its faithful performance, as
274 required by s. 255.05.

275 (d) The guaranteed energy performance savings contract may
276 contain a provision allocating to the parties to the contract any
277 annual energy cost savings that exceed the amount of the energy
278 cost savings guaranteed in the contract.

279 (e) The guaranteed energy performance savings contract
280 shall require the guaranteed energy performance savings
281 contractor to provide to the agency an annual reconciliation of
282 the guaranteed energy or energy-related cost savings. If the
283 reconciliation reveals a shortfall in annual energy or energy-
284 related cost savings, the guaranteed energy performance savings
285 contractor is liable for such shortfall. If the reconciliation

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286 reveals an excess in annual ~~energy~~ cost savings, the excess
287 savings may be allocated under paragraph (d) but may not be used
288 to cover potential energy cost savings shortages in subsequent
289 contract years.

290 (f) The guaranteed energy performance savings contract must
291 provide for payments of not less than one-twentieth of the price
292 to be paid within 2 years from the date of the complete
293 installation and acceptance by the agency using straight-line
294 amortization for the term of the loan, and the remaining costs to
295 be paid at least quarterly, not to exceed a 20-year term, based
296 on life cycle cost calculations.

297 (g) The guaranteed energy performance savings contract may
298 extend beyond the fiscal year in which it becomes effective;
299 however, the term of any contract expires at the end of each
300 fiscal year and may be automatically renewed annually for up to
301 20 years, subject to the agency making sufficient annual
302 appropriations based upon continued realized energy savings.

303 (h) The guaranteed energy performance savings contract must
304 stipulate that it does not constitute a debt, liability, or
305 obligation of the state.

306 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
307 Department of Management Services, with the assistance of the
308 Office of the Chief Financial Officer, shall ~~may~~, within
309 available resources, provide technical content assistance to
310 state agencies contracting for energy conservation measures and
311 engage in other activities considered appropriate by the
312 department for promoting and facilitating guaranteed energy
313 performance contracting by state agencies. The Office of the
314 Chief Financial Officer, with the assistance of the Department of

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315 Management Services, shall ~~may, within available resources,~~
316 develop model contractual and related documents for use by state
317 agencies. Prior to entering into a guaranteed energy performance
318 savings contract, any contract or lease for third-party
319 financing, or any combination of such contracts, a state agency
320 shall submit such proposed contract or lease to the Office of the
321 Chief Financial Officer for review and approval. A proposed
322 contract or lease shall include:

323 (a) Supporting information required by s. 216.023(4)(a)9.

324 (b) Documentation supporting recurring funds requirements
325 in ss. 287.063(5) and 287.064(11).

326 (c) Approval by the agency head or his or her designee.

327 (d) An agency measurement and verification plan to monitor
328 cost savings.

329 (7) FUNDING SUPPORT.--For purposes of consolidated
330 financing of deferred payment commodity contracts under this
331 section by a state agency, any such contract must be supported
332 from available recurring funds appropriated to the agency in an
333 appropriation category, as defined in chapter 216, which the
334 Chief Financial Officer has determined is appropriate or which
335 the Legislature has designated for payment of the obligation
336 incurred under this section.

337
338 The Office of the Chief Financial Officer may not approve any
339 contract submitted under this section which does not meet the
340 requirements of this section.

341 Section 4. This act shall take effect July 1, 2008.